

DON MOLINE

245-1853

FAX

**FULTON COUNTY WATER DISTRICT AGREEMENT
BETWEEN
LUCAS COUNTY
AND
FULTON COUNTY**

THIS AGREEMENT entered into this 14TH day of MARCH, 1996 between Lucas County, acting through its Board of County Commissioners, and Fulton County, acting through its Board of County Commissioners.

WITNESSETH:

WHEREAS, Lucas County operates a water distribution system and has entered into water agreements with the City of Toledo for the supply of surplus water to areas of Lucas County; and

WHEREAS, Fulton County has requested permission to connect to the Lucas County distribution system for the purpose of supplying surplus Toledo water to portions of Fulton County; and

WHEREAS, the City of Toledo is willing to approve the sale of surplus Toledo water by Lucas County to Fulton County; and

WHEREAS, both Lucas County and Fulton County have the authority to construct, maintain and operate water system connections pursuant to Revised Code Chapter 6103;

NOW, THEREFORE, in consideration of the mutual promises and covenants made to each other and other good and valuable consideration, Lucas County and Fulton County do hereby agree as follows:

SECTION 1 SALE OF WATER

Lucas County agrees to supply surplus Toledo water purchased from the City of Toledo to Fulton County to be distributed through the water distribution system of Fulton County. Surplus water is defined in the Ohio Constitution Code Section XVIII Article 6. Fulton County shall have the right to sell the purchased water only to consumers within the Fulton County water district unless otherwise agreed to by Lucas County and Toledo. Fulton County may commingle non-Toledo water supplies with the Toledo water supplied by Lucas County with the written approval of Lucas County, Toledo and Ohio EPA.

SECTION 2 SERVICE DISTRICT

The Fulton County water service district consists of the area shown on the map attached as Exhibit A which is fully incorporated herein. The water service district may be expanded only through legislative enactment of the parties and subsequent executed revisions of this agreement.

This contract shall be submitted to the Director of OEPA for approval pursuant to ORC 6103.22 prior to going into effect.

SECTION 3 CONNECTION POINTS

Lucas County shall deliver water to Fulton County at a connection point located at a booster pumping station located at a mutually agreed location and such other take-off points that may be established by the parties in the future. Lucas County will authorize Fulton County to construct the required improvements as specified in bid documents for the waterline construction. Lucas County will reimburse Fulton County for pipe size differential between a 24" and a pipe size required by Lucas County on a unit price calculation.

SECTION 4 OBLIGATIONS OF FULTON COUNTY AND LUCAS COUNTY

A. Fulton County agrees to pay the total project costs (including construction, technical services and other related costs) for an equivalent of a 24" trunk water main, southwest booster pump replacement, booster pumping station and appurtenances necessary to serve the Fulton County water district. Lucas County agrees to pay for the cost of up-sizing the 24 inch water main to a pipe size and related appurtenances required by Lucas County.

B. Fulton County shall own, operate, maintain and be responsible for future replacement, if any, of the water mains and appurtenances in Fulton County, and Lucas County shall own, operate, maintain and be responsible for future replacement, if any, of the water mains and appurtenances in Lucas County required to supply water to Fulton County.

C. Plans, specifications, and construction of water system improvements in Lucas County shall conform with Lucas County standards and shall be reviewed and approved by the Lucas County Sanitary Engineer.

SECTION 5 MASTER METER SERVICE

A. Fulton County shall furnish, maintain and test its master meters in accordance with the Toledo Municipal Code and the Department of Public Utilities Rules and Regulations, at Fulton County's expense, for the purpose of measuring Toledo water supplied by Lucas County at the approved take-off points. Toledo, Lucas County and Fulton County shall have unrestricted access to such meters and each party shall be furnished a key providing access to each of the meters. The meters shall be available at all times for inspection, calibration and reading by authorized officers and employees of the parties. Lucas County and Toledo are authorized to effect repairs and maintenance of the master meters at the expense of Fulton County which, in their judgment and discretion, are of an emergency nature without requiring the consent or authorization of Fulton County; provided that Fulton County is notified prior to commencement of such work. The Fulton County master meters shall be tested pursuant to applicable provisions of the Toledo Municipal Code and the Department of Public Utilities Rules and Regulations.

B. Should a master meter fail to properly measure the volume of water provided by Lucas County to Fulton County, the volume for such period of failure shall be computed by using the flow rates of the meter for an equal number of days prior to and following the failure, or by the application of any other method or period of time as mutually agreed which would more accurately reflect the volume for such period of failure.

SECTION 6. WATER RATES

A. Fulton County shall pay for Toledo water supplied by Lucas County at a rate consisting of four components: (1) a usage charge equal to the rate charged Lucas County by Toledo; (2) a capacity charge equal to the rate charged Lucas County by Toledo; (3) a charge for operation, maintenance and equity recovery to Lucas County; and (4) a charge for operation, maintenance and replacement costs associated with the booster pumping stations for Fulton County.

A copy of the rate calculation for the rates in effect at the date of execution of this agreement is attached as Exhibit B and incorporated herein. The City of Toledo on behalf of Lucas County, shall bill Fulton County monthly for water furnished under this agreement based on meter readings furnished by Toledo and Fulton County shall pay for said service in accordance with Lucas County regulations.

B. The usage charge per 1000 cubic feet of water shall be the first block rate charged to consumers within Toledo as specified in Toledo Municipal Code section 933.02(a)(1) plus a surcharge of seventy-five percent (75%) phased in over the first three years of this agreement beginning January 1 of each year as described in Exhibit B. Upon any increase or decrease in water rates to users within the City of Toledo, Fulton County shall have the right to amend the rates specified in this section to pass on equally any increase or decrease in the Toledo first block rate. The usage charge shall be adjusted as changes are made to Toledo Municipal Code section 933.01(a)(1).

C. The capacity charge per 1000 cubic feet of water shall be twenty-five percent (25%) of the Toledo first block rate for all water use exceeding 735,000 cubic feet but less than 1,136,000 cubic feet per day. For all water use equal to or exceeding 1,136,000 cubic feet per day, the capacity charge shall be forty percent (40%) of the Toledo first block rate. The appropriate capacity charge shall apply to all water used each day.

D. The charge for Lucas County's operation, maintenance and equity recovery shall be \$2.75 per 1000 cubic feet for each of those days for each of those days that that 2.5 million gallons of surplus Toledo water is available. This charge will be equal to the above rate for the first five years of this agreement. The minimum compensation shall be based on 334,225 cubic feet per day (2.5 million gallons per day) based on 350 days per year. Beginning with the sixth year and every

five years thereafter, Lucas County and Fulton County shall review the costs and, if necessary, revise the charge to reflect a change in costs experienced by Lucas County in the operation and maintenance specifically related to service to Fulton County annually.

E. The charge for operation, maintenance and replacement costs associated with the booster pumping stations for Fulton County shall be paid by Fulton County and billed quarterly.

SECTION 7 FLOW LIMITATIONS

A. Initially, Fulton County shall be entitled to a metered usage of no more than 481,283 cubic feet per day (3.6 million gallons per day). Lucas County agrees that it shall maintain the above noted capacity for Fulton County subject to Toledo's ability to supply Lucas County with an adequate supply of surplus water and Lucas County's ability to supply Fulton County with an adequate supply of surplus water. Use greater than 481,283 cubic feet per day (3.6 million gallons per day) may only occur with the express written approval of Lucas County. Said approval shall be expressed as an amendment to this agreement and shall have specific provisions to share in the costs of the necessary improvements to the southwest pumping station, booster pumping stations and trunk water mains that will supplement or enhance the reliability of water supply to Fulton County as outlined in Section 7(B). The willful violation of these flow limitations shall be grounds for termination of this contract at the option of Lucas County.

B. The parties acknowledge that the supply of water greater than 481,283 cubic feet per day (3.6 million gallons per day) will require improvements to the southwest pumping station, booster pumping stations and/or trunk water mains. When additional capacity is requested by Fulton County by amendment to this agreement with an advanced notice of 12 months for an incremental increase in water supply, the parties in proportion to the quantity of water used shall share all costs associated with the improvements. Based on an estimated project cost of \$4 million to increase the supply of water for 3.6 million gallons per day to 6.0 million gallons per day, Lucas County agrees its share will be 60% and Toledo and Fulton County will be responsible for the remaining 40%. Maximum contribution levels will be 1) Lucas County - \$2.4 million 2) Fulton County - \$0.6 million and 3) Toledo - \$1.0 million. Project costs in excess of \$4 million shall be negotiated between Lucas County and Toledo. Lucas County shall own the constructed improvements but Fulton County shall have water capacity rights in the expanded capacity of the facilities proportionate to their paid in share. Plans for the improvements shall be submitted to the Director of the Ohio EPA for approval.

C. Fulton County agrees to reimburse Lucas County for damages, costs, or other expenses which directly result from any violation of the flow limitations specified in Section 7(A) above upon receipt of appropriate invoices detailing the expenses.

D. Lucas County can not guarantee any fixed pressure or continuous supply of water. In the event of serious damage to reservoirs, tanks or pumping stations or other emergency, water

may be shut off without notice. Notice of such shutoff shall be given to the Board of County Commissioners of Fulton County, which notice may be given by telephone, fax or letter. Any suspension of water service or inadequacy of water pressure for any of the foregoing causes, and/or for any reasons beyond the control of Lucas County and/or Toledo shall in no case render Lucas County and/or Toledo liable for damages to Fulton County and/or any person, firm, corporation and/or governmental body in the service district. Fulton County agrees to abide by and enforce any emergency restrictions of water use which may be imposed upon consumers within Lucas County and/or Toledo.

SECTION 8 APPLICABILITY OF RULES AND REGULATIONS

By execution of this agreement, Fulton County agrees to be bound by the applicable ordinances, rules and regulations of Lucas County and Toledo as they may be amended from time to time. In addition, Fulton County agrees to take any and all actions which are necessary to comply with any state or federal law or regulation governing water service including but not limited to the Safe Drinking Water Act. Fulton County agrees to assist Lucas County and Toledo in complying with such regulations. In the event Fulton County fails to comply with applicable federal, state or local regulations, Lucas County and Toledo are authorized to take necessary action to properly enforce such measures.

SECTION 9 RENEGOTIATION

Either party shall have the right to request renegotiation of any of the terms of this agreement and, upon ninety (90) days written notice to the other party, the parties shall meet for the purpose of undertaking such renegotiation. In the event the parties mutually agree upon the modification of any of the terms of this agreement, such modification shall be submitted to the City of Toledo for approval. Upon such approval, this agreement shall be amended in writing to reflect the agreed upon modification.

SECTION 10 TERM

The term of this agreement shall be for a period of twenty (20) years from the date of execution unless terminated by mutual agreement of the parties. Upon the completion of the term of this agreement, both parties have the option to request a twenty (20) year renewal of this agreement. Three years prior to term expiration, Lucas County and Fulton County shall begin negotiation on the renewal of this agreement. Negotiations shall be concluded no later than two years prior to term expiration so that all parties will have adequate time to procure another source of water in the event agreements cannot be reached.

SECTION 11 SEVERABILITY CLAUSE

The provisions of this agreement are declared to be severable and the holding as invalid of any section or provision hereof shall not impair or invalidate the remaining sections or provisions hereof.

SECTION 12 APPROVAL OF TOLEDO; RIGHT TO AMEND

A. This agreement shall be submitted to and shall require the approval of the City of Toledo.

B. Lucas County shall have the right to amend or modify the southwest water district agreement it has with Toledo without the consent or approval of Fulton County provided such amendment or modification does not modify the terms of this agreement.

SECTION 13 LIMITATION

In the event the Fulton County Water District Agreement between the City of Toledo and Lucas County is terminated for cause, this agreement, to the extent feasible under law will remain enforceable. However, should Lucas County be unable to fulfill the terms of this agreement under law, it may then be terminated for cause. In such case ninety days written notice will be provided to all parties as a reasonable time to resolve any issues that are determined as cause.

IN WITNESS WHEREOF, Lucas County, by its Board of County Commissioners and Fulton County, by its Board of County Commissioners have caused this Agreement to be executed on the date first mentioned above.

Approved as to Content:

James L. Sh... III
Sanitary Engineer

LUCAS COUNTY

Sandy Isenb...
Commissioner

Approved as to Form:

Charles J. T...
Prosecuting Attorney

BILL GPELAND

Commissioner
Mark J. ...
Commissioner

Approved as to Content:

P.E. Creager
Sanitary Engineer

FULTON COUNTY

[Signature]
Commissioner

Approved as to Form:

Wilbur R. ...
Prosecuting Attorney

[Signature]
Commissioner

[Signature]
Commissioner

Approved as to Content:

Donald H. ...
Director of Public Utilities

CITY OF TOLEDO

[Signature]
Mayor

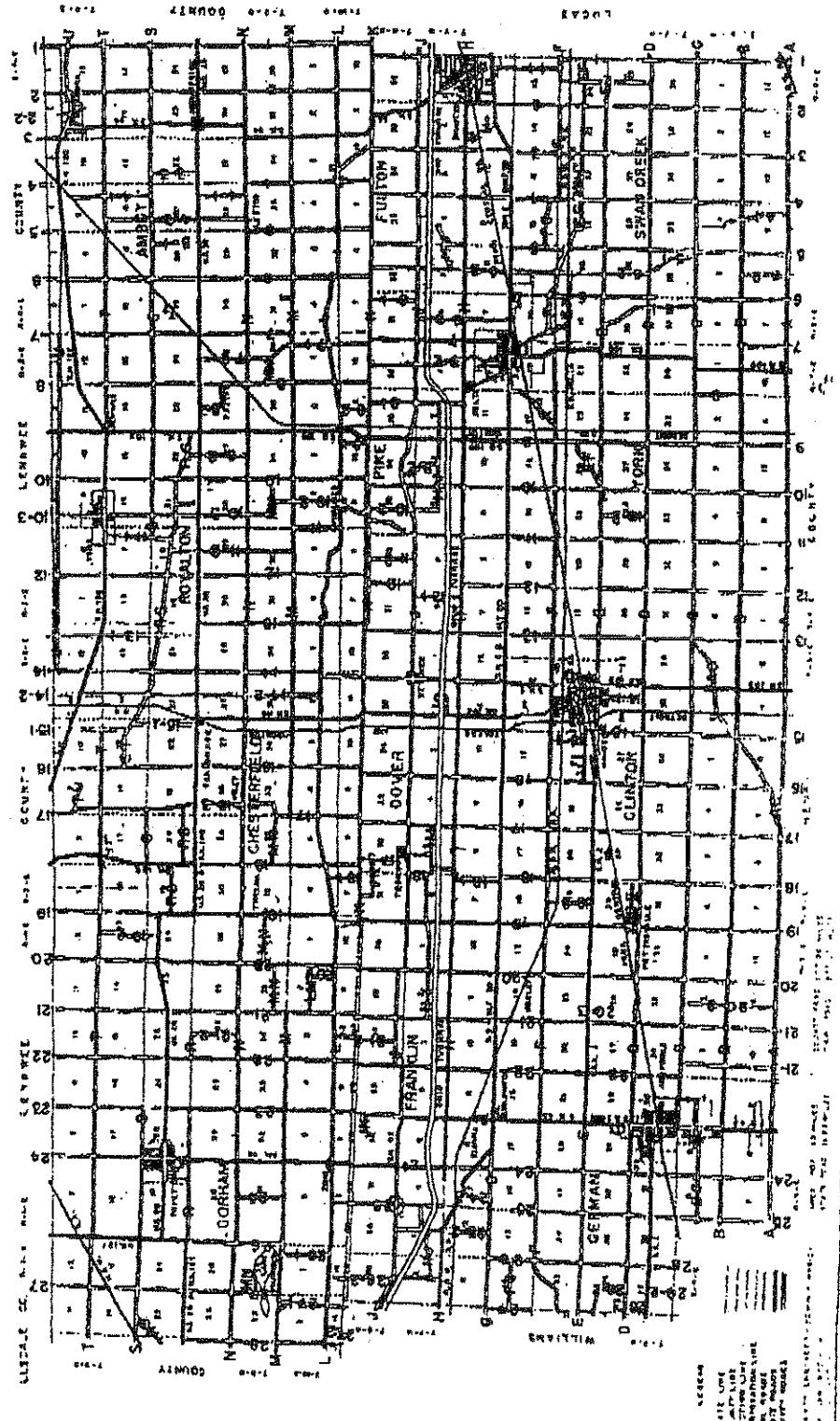
Approved as to Form:

Kerry Bruce
for Director of Law

EXHIBIT A

FULTON COUNTY WATER DISTRICT MAP

ROAD MAP OF FULTON COUNTY



RATE CALCULATION
(at 933.02(a)(1) first block rates in effect 1/1/96)

Usage charge

| <u>Year</u> | <u>1st Block</u> | <u>Surcharge</u> | |
|--------------------|------------------|------------------|---|
| signing - 12/31/97 | \$6.49 | 60% | \$6.49 x 1.60 = \$10.384/1000 cu. ft. of water |
| 1/1/98 - 12/31/98 | \$6.49 | 65% | \$6.49 x 1.65 = \$10.7085/1000 cu. ft. of water |
| 1/1/99 - 12/31/99 | \$6.49 | 70% | \$6.49 x 1.70 = \$11.033/1000 cu. ft. of water |
| all remaining | \$6.49 | 75% | \$6.49 x 1.75 = \$11.3575/1000 cu. ft. of water |

Capacity charge

- 0% for water use less than 735,000 cubic feet per day
- 25% for water use greater than 735,000 cubic feet per day but less than 1,136,000 cubic feet per day;
\$6.49 x 25% = \$1.6225/1000 cubic feet of water per day
- 40% for water use equal to or greater than 1,136,000 cubic feet per day;
\$6.49 x 40% = \$2.596/1000 cubic feet of water per day

Lucas County water distribution charge

\$2.75 per 1000 cubic feet (fixed for first five years and subject to modification in Section 6.D.)

Example

If 334,225 cubic feet (or 2.5 million gallons) were used on a particular day in 1996, with the first block rates which were in effect on signing, the amount owed by Fulton County to Lucas County would be as follows:

| | |
|----------------------|--|
| Usage Charge: | $6.49 \times 1.6 = \$10.384 \times 334,225 = \$3,450.59$ |
| Capacity Charge: | No Capacity Charge at this flow = \$0 |
| Lucas County charge: | $2.75 \times 334,225 = 919.12$ |
| TOTAL | $3,450.59 + 919.12 = \$4369.71$ |

FULTON COUNTY WATER DISTRICT AGREEMENT
BETWEEN LUCAS COUNTY AND FULTON COUNTY
AMENDING FULTON COUNTY CONTRACT 096-029
AND
AMENDING LUCAS COUNTY RESOLUTION 096-_____

THIS AGREEMENT AMENDMENT (hereinafter referred to as "Amendment") made and entered into this 10 day of August 1998, by and between Lucas County, Ohio, and Fulton County, Ohio.

WITNESSETH THAT:

WHEREAS, on March 14, 1996, the Board of Fulton County Commissioners and the Board of Lucas County Commissioners entered into an agreement to supply surplus Toledo water purchased from the City of Toledo to Fulton County to be distributed through the water distribution system of Fulton County; and

WHEREAS, it is the desire of both Boards to modify said agreement to revise the charge for Lucas County's operation, maintenance and equity recovery.

NOW THEREFORE, in consideration of the promises and mutual covenants and other good and valuable considerations, Fulton County and Lucas County do hereby promise and agree that Section 6.D and Exhibit B of the agreement dated March 14, 1996, between the parties, and hereby is, amended, so that as so amended the same shall read as follows:

Section 6 Water Rates

- D. The charge for Lucas County's operation, maintenance and equity recovery shall be \$2.75 per 1,000 cubic feet for each of those days that 1.5 million gallons of surplus Toledo water is available. This charge will be equal to the above rate for the first five years of this agreement. The minimum compensation shall be based on 200,535 cubic feet per day (1.5 million gallons per day) based on 350 days per year. Beginning with the sixth year and every five years thereafter, Lucas County and Fulton County shall review the costs and, if necessary, revise the charge to reflect a change in costs experienced by Lucas County in the operation and maintenance specifically related to service to Fulton County.

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EXHIBIT B

RATE CALCULATION

(at 933.02(a)(1) first block rates in effect 1/1/96)

Usage charge

| <u>Year</u> | <u>1st Block</u> | <u>Surcharge</u> | |
|--------------------|------------------|------------------|---|
| signing - 12/31/97 | \$6.49 | 60% | $\$6.49 \times 1.60 = \$10.384/1,000$ cu. ft. of water |
| 1/1/98 - 12/31/98 | \$6.49 | 65% | $\$6.49 \times 1.65 = \$10.7085/1,000$ cu. ft. of water |
| 1/1/99 - 12/31/99 | \$6.49 | 70% | $\$6.49 \times 1.70 = \$11.033/1,000$ cu. ft. of water |
| all remaining | \$6.49 | 75% | $\$6.49 \times 1.75 = \$11.3575/1,000$ cu. ft. of water |

Capacity charge

| | |
|-----|--|
| 0% | for water use less than 735,000 cubic feet per day |
| 25% | for water use greater than 735,000 cubic feet per day but less than 1,136,000 cubic feet per day; $\$6.49 \times 25\% = \$1.6225/1,000$ cubic feet of water per day |
| 40% | for water use equal to or greater than 1,136,000 cubic feet per day; $\$6.49 \times 40\% = \$2.596/1,000$ cubic feet of water per day |

Lucas County water distribution charge

\$2.75 per 1,000 cubic feet (fixed for first five years and subject to modification in Section 6.D.)

Example

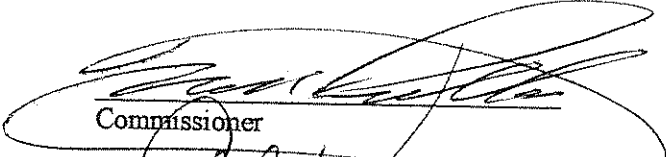
If 200,535 cubic feet (or 1.5 million gallons) were used on a particular day in 1996, with the first block rates which were in effect on signing, the amount owed by Fulton County to Lucas County would be as follows:

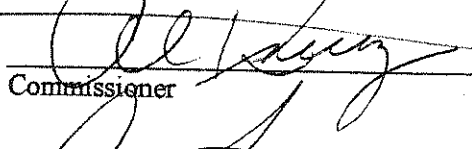
| | |
|----------------------|--|
| Usage Charge: | $\$6.49 \times 1.6 = \$10.384 \times 200,535 = \$2,082.36$ |
| Capacity Charge: | No Capacity Charge at this flow = \$0 |
| Lucas County charge: | $\$2.75 \times 200,535 = \551.47 |
| TOTAL | $\$2,082.36 + \$551.47 = \$2,633.83$ |

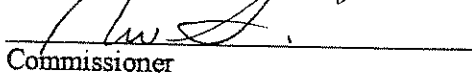
This amendment shall be attached to Fulton County Contract 096-029 and Lucas County Resolution 096-

FULTON COUNTY

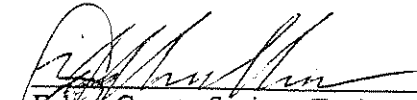
Approved as to content:



Commissioner



Commissioner


Commissioner



Fulton County Sanitary Engineer

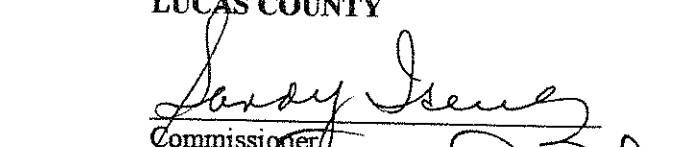
Approved as to form:

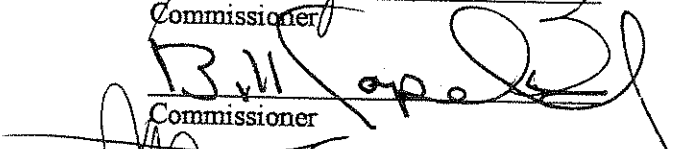


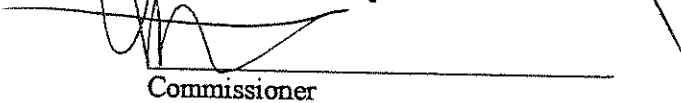
Fulton County Prosecuting Attorney

LUCAS COUNTY

Approved as to content



Commissioner


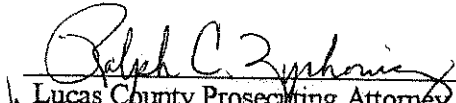
Commissioner


Commissioner



Lucas County Sanitary Engineer

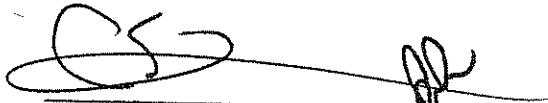
Approved as to form



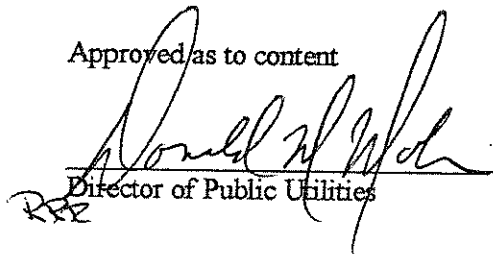
Lucas County Prosecuting Attorney

CITY OF TOLEDO

Approved as to content

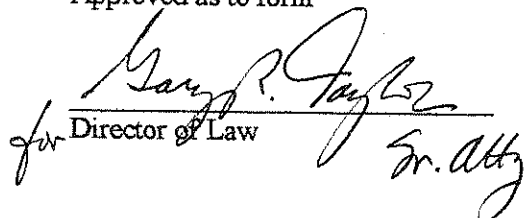


Mayor



Director of Public Utilities
RFE

Approved as to form



Director of Law
for Sr. Atty.

RESOLUTION 098 - 489

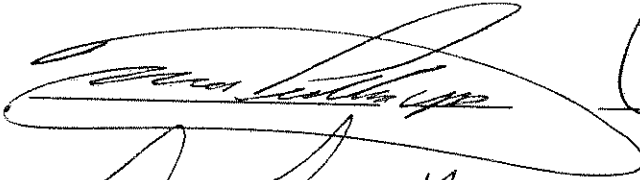
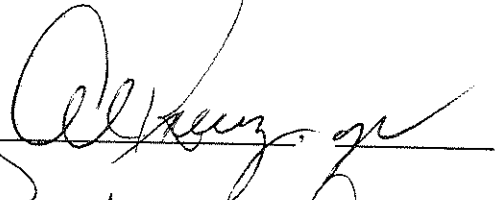
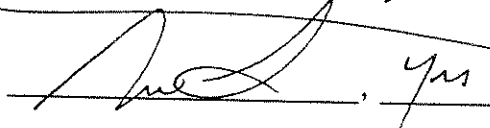
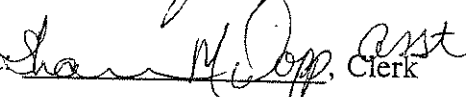
In the Matter of Resolution To Approve) Office of County Commissioners
Amendment to Water Service Agreement) Fulton County, Ohio
096-029 with Lucas County) August 6, 1998

Commissioner Peebles moved for the adoption of the following resolution:

WHEREAS, it is the desire of both Boards of Fulton and Lucas County Commissioners to modify the existing Water Service Agreement to revise the charge of Lucas County's operation, maintenance and equity recovery,

THEREFORE BE IT RESOLVED, that Water Service Agreement, Contract 096-029 with Lucas County be amended to take or pay at 1.5 million gallons as presented by the Fulton County Sanitary Engineer.

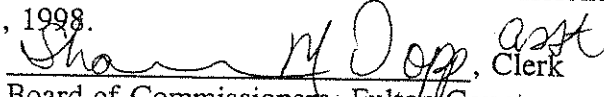
Commissioner Kreuz seconded the resolution and upon calling the roll, the following vote was taken:



 yes
Attest:  Clerk

cc: Lucas County Commissioners
Lucas County Sanitary Engineer
Fulton County Sanitary Engineer
Water Service Agreement File
Contract File
Auditor
City of Toledo

CERTIFICATE

I, Susan J. Wood, Clerk of the Commissioners of Fulton County, Ohio, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of County Commissioners of Fulton County, Ohio, and recorded in the Commissioner's Journal 81 Page 284 on August 6, 1998.


Clerk
Board of Commissioners, Fulton County,